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In re:

PG&E CORPORATION

- and -

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

- ☐ Affects PG&E Corporation
☒ Affects Pacific Gas and Electric
Company
☐ Affects both Debtors

**All papers shall be filed in the Lead Case, No.
19-30088 (DM)*

Bankruptcy Case No. 19-30088 (DM)
Chapter 11
(Lead Case)
(Jointly Administered)

**MOTION AND MEMORANDUM
OF THE AD HOC GROUP OF
INTERCONNECTION CUSTOMERS
TO COMPEL PAYMENT OF
PASS-THROUGH AMOUNTS
WITHHELD BY PACIFIC GAS
AND ELECTRIC COMPANY**

Date: November 13, 2019
Time: 10:00 a.m. (PT)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

Objection Deadline:
November 8, 2019, at 4:00 p.m. (PT)

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Each of the Interconnection Customers of Pacific Gas and Electric Company (the “*Utility*” and, together with PG&E Corporation, the “*Debtors*”) identified in Section IV below (collectively, the “*Movants*” or the “*Ad Hoc Group of Interconnection Customers*”), by and through their undersigned counsel of record, hereby moves the Court for entry of an order in substantially the form attached as **Exhibit A** directing the Utility to remit to them all Pass-Through Amounts (as defined below) received by the Utility for their benefit. This Motion and Memorandum is supported by the declaration of Jennifer Mersing (the “*Mersing Declaration*”), the Narayanan Declaration, the Liddell Declaration, and the Yoder Declaration, each as defined below, filed contemporaneously herewith and the files and records referenced herein.

PRELIMINARY STATEMENT

This Motion and Memorandum concerns the Utility’s refusal to remit to the Movants moneys that the Utility receives from third parties and is obligated to forward to the Movants on a “dollar-for-dollar” basis under both contractual agreements and under the regulations that govern the Utility’s electricity transmission system.

In addition to its primary business of selling electricity and gas to its energy customers, the Utility owns and operates an electricity transmission system comprising approximately 18,000 circuit miles of interconnected transmission lines operating at voltages ranging from 60 to 500 kilovolts and operates 84 electric transmission substations with a capacity of approximately 65,000 megavolt amperes (the Utility’s “*Transmission System*”) ¹ This Transmission System is interconnected with the electric power systems in the Western Electricity Coordinating Council, which includes many western states, Alberta and British Columbia, Canada, and parts of Mexico.

The transmission of electricity within a geographic area is a natural monopoly. In return for recognizing and protecting the Utility’s monopoly Transmission System, the Utility is subject to extensive regulation by the Federal Energy Regulatory Commission (“*FERC*”), the California

¹ The Transmission System is distinct from the Utility’s distribution network, which interconnects approximately 107,000 circuit miles of distribution lines with the Transmission System at switching and distribution substations, where high-voltage transmission voltages are lowered to voltages suitable for distribution to the Utility’s customers.

1 Public Utilities Commission (“**CPUC**”), and the California Independent System Operator
2 Corporation (“**CAISO**”).

3 Among other things, the Utility is required to provide open access to the Transmission
4 System to parties (“**Transmission Customers**”), including the Utility’s competitors and their
5 customers, wishing to contract for delivery of power through the Utility’s service territory pursuant
6 to CAISO’s FERC-approved Open Access Transmission Tariff (the “**Tariff**”).

7 Just as its wires transmit power between third parties, the Utility also is a conduit for certain
8 payments by Transmission Customers to the owners of energy projects, including the Movants, that
9 are connected to the Transmission System pursuant to interconnection agreements
10 (“**Interconnection Customers**”). This Motion concerns the Utility’s role as a financial intermediary
11 between third parties and Interconnection Customers for payments that the Utility has kept for itself
12 instead of forwarding to the Movants, in breach of both its contractual and regulatory obligations.

13 As explained in more detail below, the Utility has no equitable interests in the payments, is
14 violating applicable law in detaining them, and is needlessly exposing the estate to potential losses
15 and regulatory sanctions for its failure to forward the Pass-Through Amounts to the Movants.
16 Accordingly, the Movants respectfully request that the Court enter an order either directing the
17 Utility to forward to them all Pass-Through Amounts that have been and that are subsequently
18 received by the Utility or granting the alternative or further relief described below.

19 JURISDICTION

20 1. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334,
21 the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24
22 (N.D. Cal.), and 5011-1(a) of the Bankruptcy Local Rules for the United States District Court for
23 the Northern District of California (the “**Bankruptcy Local Rules**”).

24 2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

25 3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

26 4. The statutory predicates for this motion are §§ 105, 361, 362, 363, and 541 of the
27 United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), Rules 4001
28

1 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Bankruptcy
2 Local Rule 4001-1.

3 **RELIEF REQUESTED**

4 5. By this motion (this “**Motion**”), the Movants request entry of an order compelling
5 (i) payment as soon as practicable, and in all events no later than December 31, 2019, of all
6 outstanding pre- and post-petition Pass-Through Amounts and (ii) timely payment of all Pass-
7 Through Amounts that become due and payable after the date of this Motion.

8 6. In the alternative, if the Utility is not required to remit all Pass-Through Amounts to
9 the Movants, the Utility should be ordered to segregate all Pass-Through Amounts and provide the
10 Movants with adequate protection through a lien on such segregated funds pursuant to Sections 361
11 and 363 of the Bankruptcy Code.

12 7. In the further alternative, if the Court perceives that it is unable to resolve the issues
13 raised by the Motion, the Court should grant Movants relief from the automatic stay to pursue
14 appropriate relief.²

15 **BACKGROUND**

16 **I. TRANSMISSION OF ELECTRICITY IN CALIFORNIA**

17 8. Approximately three-quarters of California and a small portion of Nevada are served
18 by a single, interconnected system of power transmission lines and facilities under CAISO’s
19 control.³ Transmission assets are owned separately by multiple transmission companies, including
20

21 ² The Movants believe the requested relief is properly sought by motion pursuant to Fed. R.
22 Bankr. P. 4001(a) and 9014, rather than by adversary proceeding pursuant to Fed. R. Bankr.
23 P. 7001. The Motion seeks relief from the automatic stay under 11 U.S.C. § 362(d)(2), which
24 may properly be brought and adjudicated on motion, to resolve the same legal issue (based
25 on the same facts) underlying the Movants’ entitlement to all of the relief requested by the
26 Motion: whether the Utility has any equity or equitable interest in the Pass-Through
27 Amounts. And because the Motion would be considered as a contested matter, service by
28 summons and complaint is not necessary as a matter of due process because “the same
fundamental requisites of due process must be satisfied . . . in the same manner as in an
adversary proceeding”. See *Fortune & Faal v. Zumbrun (In re Zumbrun)*, 88 B.R. 250, 252
(B.A.P. 9th Cir. 1988).

³ See Mersing Declaration, at ¶¶ 2-5.

(continued . . .)

1 the Utility, which then agree to grant CAISO, as the independent system operator, operational
2 control over their respective transmission assets.⁴

3 9. In return for turning over operation of their transmission facilities to CAISO, the
4 transmission companies recover their transmission costs (including a return on equity for their
5 transmission capital investments) through CAISO.⁵

6 10. As a transmission-owning member of CAISO, the Utility is required by the terms of
7 the Tariff to provide interconnection to its Transmission System to eligible power generation
8 projects (“**Project Companies**”) that wish to sell power, directly or indirectly (*e.g.*, through the
9 Utility), to end-user electric power customers (*i.e.*, Transmission Customers).⁶ The rights and
10 obligations of the Utility, as a “participating transmission owner” (a “**PTO**”), CAISO, as the system
11 operator, and the Project Companies, as “Interconnection Customers,” are governed by two
12 standard forms of interconnection agreements that have been publicly filed and approved by FERC
13 following a public comment period: a Small Generator Interconnection Agreement for projects
14 smaller than 20 megawatts and a Large Generator Interconnection Agreement for projects of 20
15 megawatts or more.⁷ Any proposed changes to the material terms of the applicable form of
16 interconnection agreement must be submitted to FERC for approval.⁸

17 11. Pursuant to Section 205 of the Federal Power Act, 16 U.S.C. §§ 792, *et seq.* (the
18 “**FPA**”), FERC has jurisdiction over the transmission and wholesale sale of electric energy in
19 interstate commerce and is responsible for establishing “just and reasonable rates” for such
20 transmission and wholesale electric energy sales.⁹ CAISO operates and provides open and non-
21 discriminatory access to the bulk of California’s wholesale transmission grid.¹⁰ CAISO does not

22
23 ⁴ *Id.*

24 ⁵ *Id.*

25 ⁶ *Id.*

26 ⁷ See Tariff at Appendices T, V, BB, CC, EE and FF.

27 ⁸ See *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,163 at P.18 (2005).

28 ⁹ See Mersing Declaration, at ¶ 9.

¹⁰ See Mersing Declaration, at ¶ 2.

(continued . . .)

1 itself own any transmission facilities, but rather operates the transmission facilities of its member
2 PTOs, including the Utility.¹¹ The interconnection of generation projects to the CAISO-controlled
3 transmission system is subject to regulation by FERC pursuant to the FPA.¹² CAISO operates under
4 the terms and conditions of its Tariff, which must meet FERC's requirements and standards in order
5 to qualify for FERC's official approval and remain valid and binding under the requirements of the
6 FPA.¹³

7 12. The Utility falls under the definition of a "public utility" under the FPA and is
8 therefore subject to FERC's regulatory oversight regarding both the stability of its rates and the
9 reliability of its power supply.¹⁴ The Utility is also subject to FERC's Standards of Conduct, which
10 requires that utility companies keep their transmission operations strictly separate from their role
11 as a power company in the business of marketing and sales.¹⁵ The Utility engages in wholesale
12 power sales transactions, such as power purchase agreements ("*PPAs*"), while also functioning in
13 the separate role of the transmission facility operator of numerous generation projects located
14 within its geographic region.¹⁶ This Motion concerns only the Utility's role as a transmission
15 operator, *and not* its role as a private company engaged in the sale of power through PPAs.

16 **II. NETWORK UPGRADES, NETWORK UPGRADE PAYMENTS, AND NURS**

17 13. In 2003, FERC issued an order setting forth a new policy based on its findings that
18 the country's transmission networks require certain modifications and upgrades on an ongoing
19 basis, as more and more individual generator projects join each regional grid.¹⁷ Pursuant to the new
20 policy, an Interconnection Customer who seeks to build a generator facility in a PTO's geographic
21

22
23 ¹¹ *Id.*

24 ¹² *Id.*, at ¶ 3.

25 ¹³ *Id.*

26 ¹⁴ *Id.*, at ¶ 9.

27 ¹⁵ *Id.*, at ¶ 5.

28 ¹⁶ *Id.*

¹⁷ Order No. 2003, 104 FERC ¶ 61,103 (2003), (the "*FERC Order*").

(continued . . .)

1 region enters into a three-party interconnection agreement with the respective PTO and CAISO.¹⁸
2 Each project's respective interconnection agreement details the specific network upgrades required,
3 based on an interconnection study process conducted beforehand by CAISO and the relevant
4 PTO.¹⁹ The Interconnection Customer is required to post security at the beginning of a new project,
5 which is used by the PTO to fund the required network upgrades.²⁰ The Interconnection Customer
6 is entitled to a refund equal to the total amount, plus interest, that it initially paid for the network
7 upgrades (such refunds, the "*Network Upgrade Reimbursements*" or "*NURs*").²¹ The PTO is
8 permitted to include the costs of the network upgrades in its transmission rates after it has refunded
9 the NURs to the Interconnection Customer.²² At that point, the PTO is able to earn a return on the
10 network upgrade costs.²³

11 14. Once the project reaches its commercial operation date, the NURs become due to be
12 refunded to the Interconnection Customer on a dollar-for-dollar basis, plus interest based on the
13 methodology set forth under 18 C.F.R. § 35.19a(a)(2)(iii), either through direct payments made on
14 a levelized basis over a five-year period or according to any alternative payment schedule that is
15 mutually agreeable to the Interconnection Customer and the PTO, provided that the full repayment
16 is made within 5 years from the project's commercial operation date.²⁴

17 15. The Utility, as a transmission operator, recovers its transmission costs through
18 CAISO.²⁵ This includes the amounts paid for NURs.²⁶ Prior to repaying the NURs to the

19 ¹⁸ Pursuant to the FERC Order, all public utilities that own, control or operate transmission
20 facilities must include in their tariffs both standard generator interconnection procedures
and a standard interconnection agreement.

21 ¹⁹ See Mersing Declaration, at ¶ 6.

22 ²⁰ *Id.*, at ¶¶ 6-7.

23 ²¹ *Id.*, at ¶¶ 7-8.

24 ²² *Id.*, at ¶¶ 12-13.

25 ²³ *Id.*

26 ²⁴ See *Cal. Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,009 (2005). Interconnection customers
may choose to receive applicable financial rights as an alternative to receiving the NURs as
cash refund payments over a five-year period.

27 ²⁵ See Mersing Declaration, at ¶ 11.

28 ²⁶ *Id.*, at ¶ 12-13.

(continued . . .)

1 Interconnection Customers, transmission operators are not entitled to earn a return on such
2 amounts.²⁷ Only after the NURs have been repaid to the Interconnection Customers are the
3 transmission operators entitled to include the NUR costs in their rate base and earn a return on the
4 NUR costs.²⁸ In the Utility's current rate filing (currently pending before certain FERC settlement
5 and hearing procedures), the Utility has continued to include line item entries to recover amounts
6 paid for NURs.²⁹

7 **III. TEST ENERGY**

8 16. Under a power purchase agreement, the standard practice is to implement an initial
9 test period between the date the facility is first brought online and synchronized to the CAISO-
10 controlled transmission system and the date the facility is considered to have achieved commercial
11 operation.³⁰ The project company, together with CAISO, uses this test period to confirm that the
12 facility is operating properly before CAISO grants approval to allow the facility to become fully
13 commercially operational.³¹ During the test period, the energy generated by the facility is
14 commonly sold to a power purchase off-taker at a price specified in the relevant power purchase
15 agreement.

16 17. On December 30, 2013, CA Flats Solar 150, LLC ("*Cal Flats 150*") entered into a
17 Power Purchase Agreement (the "*PG&E PPA*") with the Utility, which provides that Cal Flats 150's
18 full compensation for the energy sold to the Utility during the test period shall be categorized as
19 "CAISO Revenues" for the delivered energy, which the Utility is required to forward promptly to
20 Cal Flats 150 in accordance with the schedule in Section 6.1 of the PG&E PPA.³²

23 ²⁷ *Id.*

24 ²⁸ *Id.*

25 ²⁹ *Id.*

26 ³⁰ See Narayanan Declaration, *defined below*, at ¶ 17.

27 ³¹ *Id.*

28 ³² *Id.*, at ¶ 18 (citing to Section 4.1(c) of the PG&E PPA).

(continued . . .)

18. The test period under the PG&E PPA was conducted from December 20, 2018 through January 28, 2019 (the “**Test Period**”).³³ After the conclusion of the Test Period, CAISO remitted \$274,159.67 to the Utility as payment for “test energy” generated by Cal Flats 150 during the Test Period (the “**Test Period Payment**”, and together with the NURs, the “**Pass-Through Amounts**”).³⁴ Here, as with the NUR payments, the Utility is serving as a pass-through agent for the Test Period Payment received from CAISO and due to be paid to Cal Flats 150. To date, the Utility has failed to remit the Test Period Payment to Cal Flats 150, as required under Section 4.1(c) of the PG&E PPA, and is instead holding such amounts for itself.

IV. MOVANTS

19. Each of the Movants is the owner of a renewable energy or energy storage project interconnected to the Utility’s Transmission System. The Movants are CA Flats Solar 130, LLC, CA Flats Solar 150, LLC, and Solar Star California XIII, LLC (collectively, the “**Capital Dynamics Project Companies**”); 67RK 8me LLC, 65HK 8me LLC, and 87RL 8me LLC (also known as Hayworth, Redcrest and Woodmere, or the “**Redwood Solar Projects**”) and Adera Solar, LLC (collectively, the “**sPower Project Companies**”); and RE Mustang LLC, RE Mustang 3 LLC, and RE Mustang 4 LLC (collectively, the “**Mustang Project Companies**”).

20. As described in greater detail in the declarations in support of this Motion submitted by Anand Narayanan, with respect to the Capital Dynamics Project Companies (the “**Narayanan Declaration**”), Ryan Liddell, with respect to the sPower Project Companies (the “**Liddell Declaration**”), and Jon C. Yoder, with respect to the Mustang Project Companies (the “**Yoder Declaration**”, and together with the Narayanan Declaration and the Liddell Declaration, the “**Client Declarations**”), each of the Movants is party to an interconnection agreement with CAISO and the Utility (the “**Interconnection Agreements**”). Some of the Movants have entered into PPAs with the Utility; others have agreed to sell their power to third parties, including both large corporate power consumers and nonprofit community choice aggregators.

³³ *Id.*, at ¶ 16.

³⁴ *Id.*, at ¶¶ 16-18.

21. Pursuant to their Interconnection Agreements with the Utility and CAISO, all of the Movants have paid (or agreed to pay) for the construction of network upgrades to the Transmission System and are (or will be) entitled to Network Upgrade Reimbursements funded on a “dollar-for-dollar” basis by the Transmission Customers and passed through the Utility.³⁵

22. In addition, the Utility is currently withholding amounts received from CAISO for Cal Flats 150, as reimbursement for energy generated during the respective project’s Test Period.³⁶ Pursuant the PG&E PPA, the Test Period Payment for such energy is first remitted from CAISO to the Utility, and the Utility is in turn required to promptly forward the Test Period Payment on to Cal Flats 150.³⁷

LEGAL ARGUMENT

23. The Movants submit that based upon the foregoing facts, and under applicable law as set forth below, the relief requested by this Motion should be granted and the Court should enter an order compelling the Utility to flow through, to the intended beneficiaries, the Pass-Through Amounts it has received and is scheduled to receive for the benefit of the Interconnection Customers. According to the congressional intent manifested in the express language of the FERC Order, the Pass-Through Amounts were never intended to be property of the Utility, let alone its general creditors. Moreover, by withholding the Pass-Through Amounts, the Utility is throwing a wrench into the federally regulated power transmission system, which requires continual maintenance and essential upgrades. The Utility’s abrupt refusal to comply with its obligations to remit the Pass-Through Amounts has caused uncertainty and confusion to ripple through the energy community, as current counterparties and potential future business partners have no clarity on why the Utility sought court approval to continue issuing some refunds despite the automatic stay (as under the Customer Programs Motion),³⁸ while the Utility has simply refused to make the NUR

³⁵ See Narayanan Declaration, at ¶¶ 10-15, Liddell Declaration, at ¶¶ 7-12, and Yoder Declaration, at ¶¶ 5-8.

³⁶ See Narayanan Declaration, at ¶¶ 16-19.

³⁷ *Id.*

³⁸ See *Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a), 363(b), and 507(a)(7) and Fed. R. Bankr. P. 6003 and 6004 for Interim and Final Orders (I) Authorizing Debtors to (A)* (continued . . .)

1 payments and Test Period Payment without any explanation or differentiation. Finally, the Utility
2 is ultimately doing itself and its creditors a disservice by refusing to do so because (i) the Utility
3 can only receive a return on equity for network upgrade costs *after* it has refunded the
4 corresponding NURs to the relevant Interconnection Customer and (ii) interest continues to accrue
5 on the unpaid NURs, and the Utility will ultimately have to pay the total amount due to the
6 Interconnection Customers, plus interest, out of its bankruptcy estate. Therefore, the longer the
7 Utility delays in refunding the NURs, the larger the total amount ultimately paid by the Utility to
8 the Interconnection Customers.

9 **I. THE UTILITY SHOULD BE DIRECTED TO REMIT THE PASS-THROUGH**
10 **AMOUNTS TO THE MOVANTS BECAUSE THE UTILITY HAS NO EQUITABLE**
11 **INTEREST IN THEM**

12 24. The principal issue raised by this Motion is whether the Pass-Through Amounts
13 received by the Utility from third-parties for the purpose of recovering network upgrade costs that
14 were incurred and paid solely by Interconnection Customers are, or are not, property of the Utility's
15 estate as defined in Section 541(d) of the Bankruptcy Code. A bankruptcy estate includes all
16 property of the debtor, but only to the extent of the debtor's equitable interest in the property. 11
17 U.S.C. § 541(d).

18 25. A trustee who holds funds in trust for a beneficiary possesses only legal title in the
19 funds, while the equitable interest belongs to the beneficiary. *See* Restatement (Second) of
20 Trusts § 2 cmt. f (1959). "Because the debtor does not own an equitable interest in property he
21 holds in trust for another, that interest is not 'property of the estate.'" *Begier v. I.R.S.*, 496 U.S. 53,
22 59 (1990).

23 26. To the extent the Utility holds the Pass-Through Amounts in trust, such funds are
24 not property of the estate, but belong instead to the Interconnection Customers. In order to
25 determine whether, on the merits, the Pass-Through Amounts are held in trust, the Court must first
26 resolve whether the issue is controlled by state law or federal common law.

27 *Maintain and Administer Customer Programs, Including Public Purpose Programs, and*
28 *(B) Honor and Prepetition Obligations Relating Thereto; and (II) Authorizing Financial*
Institutions to Honor and Process Related Checks and Transfers, Case No. 19-30088,
(Bankr. N.D. Cal. Jan. 29, 2019) [Dkt. No. 16] (the "***Customer Programs Motion***").

1 27. Confronting these same questions in an analogous case, the Third Circuit Court of
2 Appeals correctly concluded that federal common law controls and treats funds like the Pass-
3 Through Amounts as held in trust by the debtor. *See Official Comm. of Unsecured Creditors v.*
4 *Columbia Gas Sys. Inc. (In re Columbia Gas Sys. Inc.)*, 997 F.2d 1039, 1051 (3d Cir. 1993). Indeed,
5 the Debtors' Customer Programs Motion, citing *Columbia Gas*, acknowledged and sought an order
6 recognizing as much with respect to certain other funds, but, inexplicably, not the Pass-Through
7 Amounts. Likewise, and for the reasons explained below, federal common law controls and
8 compels the conclusion that the Pass-Through Amounts are also held by the Utility in trust for the
9 benefit of the Interconnection Customers.

10 **A. Federal Common Law Governs Whether the Pass-Through Amounts Are**
11 **Property of the Utility's Estate**

12 28. It is well established that the interpretation of federal statutes, including Section 541
13 of the Bankruptcy Code, is governed by federal law.³⁹ Applying federal law, courts may adopt state
14 law as the federal rule of decision or they may fashion a uniform federal common law rule.⁴⁰

15 29. The Supreme Court has outlined a three-factor test to determine whether uniform
16 federal common law or state law should apply, based on the nature and importance of the
17 governmental interest at issue and the effect of applying state law on that interest. *See United*
18 *States v. Kimbell Foods, Inc.*, 440 U.S. 715, 727 (1979).

19 30. To determine whether a federal rule is warranted, courts should consider: (1) the
20 need for a federal uniform law; (2) whether the application of state law would frustrate specific
21 objectives of the federal program at issue; and (3) the extent to which application of a federal
22 common law rule would upset commercial expectations that state law would govern. *Id.* Generally,

23 ³⁹ *See In re Nucorp Energy Sec. Litig.*, 772 F.2d 1486, 1489 (9th Cir. 1985) ("A claim which
24 arises under a federal statute and implicates federal policy is appropriately decided under
25 federal law."); *see also Thompson v. Paul*, 547 F.3d 1055, 1061 (9th Cir. 2008) ("Federal
26 statutory rights could be easily defeated if state law could be used to control the incidents
27 of those rights and the defenses to them." (quoting *Petro-Ventures, Inc. v. Takessian*, 967
28 F.2d 1337, 1340 (9th Cir. 1992))).

⁴⁰ *See Mardan Corp. v. C.G.C. Music, Ltd.*, 804 F.2d 1454, 1457 (9th Cir. 1986) (where
disagreements arose between a vendor and purchaser over contribution costs of
environmental clean-up pursuant to federal statute CERCLA, court must decide whether to
interpret the contracts under state law or to develop a uniform federal standard).

(continued . . .)

1 federal law should coincide with the relevant state law unless the state law would undermine the
2 objectives of the federal statutory scheme and there is a distinct need for nationwide standards. *Id.*⁴¹

3 31. The *Columbia Gas* case is analogous, persuasive, and correct. There, the debtor,
4 owner of a natural gas pipeline, requested authority to pay certain obligations, including amounts
5 the debtor had collected under the previous pricing method, after FERC passed an order
6 implementing a new pricing method and requiring the suppliers to refund amounts customers had
7 been overcharged under the previous method. *Columbia Gas*, 997 F.2d at 1053.

8 32. Applying *Kimbell*, the Third Circuit determined that there existed the need for a
9 national uniform law because (i) the refunds at issue arose directly under FERC tariff orders,
10 thereby sufficiently implicating federal interests; (ii) the application of state trust law would
11 frustrate the central objective of the Natural Gas Act and “warp the definition Congress intended to
12 provide to the exclusion from the bankruptcy estate for equitable interests” under Section 541(d);
13 and (iii) the application of federal common law would not upset commercial expectations, as
14 “[c]reditors cannot reasonably assume that state law will allocate various parties’ interests in
15 federally created property rights.” *Id.* at 1055-56. Likewise, here, application of the *Kimbell* test
16 establishes that federal common law, rather than state trust law, properly governs the question of
17 whether the Pass-Through Amounts are held in trust by the Utility for its Interconnection
18 Customers.

19 33. First, the Utility’s original obligation to collect and reimburse the Pass-Through
20 Amounts arises directly from the FERC Order, which establishes a national regulatory framework
21 governing the interconnection of projects to the transmission system in order to maintain the
22 integrity and stability of the transmission network through the funding of network upgrades. It is

23 ⁴¹ The Ninth Circuit Court of Appeals has applied the *Kimbell* test in a variety of cases to
24 determine whether the respective issue warranted the adoption of a federal common law
25 rule. See *United States v. Northrop Corp.*, 59 F.3d 953, 961 (9th Cir. 1995) (determining
26 under the *Kimbell* test that the adoption of a uniform federal common law rule regarding
27 claims brought under the federal False Claims Act was necessary, as opposed to
28 incorporating various state laws, since state law would contradict the intent expressed by
Congress); see also *Am. Int’l Enters., Inc. v. F.D.I.C.*, 3 F.3d 1263, 1268 (9th Cir. 1993)
(applying the *Kimbell* test to determine that the adoption of a uniform federal common law
rule was not necessary where the California statute of frauds did not conflict with the
FDIC’s existing real estate transaction procedures).

1 under this framework that the Utility acquired the Pass-Through Amounts. Consequently, the
2 question of whether the Pass-Through Amounts became property of the estate upon the Utility's
3 commencement of its bankruptcy case sufficiently implicates the important federal interest of
4 regulating interstate transmission in order to provide a stable and reliable power supply throughout
5 the nation and warrants the application of federal common law. *See id.* at 1055.

6 34. Second, applying state law to determine the nature of the Utility's interests in the
7 Pass-Through Amounts would frustrate the FPA's purpose of providing open access and non-
8 discriminatory transmission service to ensure a stable supply of power throughout the United States.
9 California trust law requires an element of wrongdoing to establish the existence of a constructive
10 trust.⁴² In contrast, federal common law looks to the contractual arrangement between the entity
11 holding the funds and the intended recipient to determine whether an implied trust exists or rather
12 a debtor-creditor relationship between the parties.⁴³ The application of federal common law of
13 trusts is warranted, because the federal intent behind the regulatory requirements of FERC and the
14 FPA would be contravened by the application of state trust law.⁴⁴

15 35. Finally, it is beyond cavil that the application of federal common law to resolve
16 federally created property rights arising from the federal statutory and regulatory scheme of the
17 FPA and the FERC Order would not upset commercial expectations that state law should govern
18 such property rights.

19 36. All three factors of the Supreme Court's *Kimbell* test support the determination that
20 the federal common law of trusts governs the question of whether the Utility holds the Pass-
21 Through Amounts in trust for the benefit of the Interconnection Customers.

22
23
24 ⁴² See Cal. Civ. Code §§ 2223, 2224.

25 ⁴³ See *Columbia Gas*, 997 F.2d at 1056 ("Federal common law imposes a trust when an entity
26 acts as a conduit, collecting money from one source and forwarding it to its intended
recipient.").

27 ⁴⁴ See *Wheeler v. City of Santa Clara*, 894 F.3d 1046, 1056 (9th Cir. 2018) ("State law should
28 not be incorporated where doing so would frustrate specific objectives of the federal
programs." (brackets and citation omitted)).

1 **B. Under Federal Common Law, the Pass-Through Amounts Are Being Held in**
2 **Trust by the Utility for the Benefit of the Interconnection Customers and**
3 **Therefore Are Not Property of the Utility's Bankruptcy Estate**

4 37. To determine whether, under federal common law, the Pass-Through Amounts are
5 held in trust by the Utility, *Columbia Gas* is again analogous. Applying federal common law, the
6 Third Circuit found that the debtor held the refunds in trust for its customers, and therefore excluded
7 them from the bankruptcy estate. *Columbia Gas*, 997 F.2d at 1059. The court first reasoned that
8 under a trust the beneficiary holds an equitable interest in the trust property, while only bare legal
9 title is vested in the trustee.⁴⁵ The court went on to determine that because the debtor held the
10 customer refunds in trust, the refunds were excluded from the bankruptcy estate and were
11 immediately payable to the debtor's customers.⁴⁶

12 38. Congress intended that Section 541(d) of the Bankruptcy Code exclude from the
13 debtor's estate not only funds held by the debtor in an *express trust*, but also funds held in
14 *constructive trust*.

15 Situations occasionally arise where property ostensibly belonging to
16 the debtor will actually not be property of the debtor, but will be held
17 in trust for another. For example, if the debtor has incurred medical
18 bills that were covered by insurance, and the insurance company had
19 sent the payment of the bills to the debtor before the debtor had paid
20 the bill for which the payment was a reimbursement, the payment
21 would actually be held in constructive trust for the person to whom
22 the bill was owed.

23 H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 368 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963,
24 6324.

25 39. The example used in Congressional sessions to explain Section 541(d)'s
26 demarcation of the debtor's estate clearly shows the congressional intent that when a debtor acts as
27 a conduit, receiving and transmitting funds from one party to another, it holds these funds in a
28 constructive trust and lacks any equitable interest in such funds.

 40. In *Columbia Gas*, the Third Circuit Court of Appeals held that in assessing whether
an implied trust can be found under federal common law, a court must look to whether the intent of

⁴⁵ *Id.*

⁴⁶ *Id.*

1 the parties was to create a trust or a loan. *Columbia Gas*, 997 F.2d at 1060. If the language of the
2 contracts does not definitively establish an express trust, the intent can be seen in the language of
3 the parties, their conduct, and other circumstances found in the context surrounding the transaction.
4 *Id.*

5 41. In typical transactions, both trust and debtor-creditor relationships are created by
6 freely-negotiated contractual agreement between two parties. Here, however, the Utility's
7 obligation to collect and reimburse the NURs was created unilaterally by FERC, pursuant to its
8 statutory authority under the FPA.

9 42. Neither the Utility nor the Interconnection Customers can alter their respective
10 interest in the NURs by contract without FERC approval.⁴⁷ The Utility is required to enter into
11 interconnection agreements with any potential Interconnection Customer seeking to build a
12 generator project that would interconnect with the Utility's Transmission System, provided the
13 Interconnection Customer has followed the required procedures and satisfies the criteria contained
14 in the Tariff.⁴⁸

15 43. Therefore, the analysis of the Utility's interest in the NURs turns on the
16 manifestations of FERC's intent. The FERC Order and Tariff are the source of the Utility's
17 obligation to reimburse the Pass-Through Amounts to the Interconnection Customers, according to
18 the schedule detailed in their respective Interconnection Agreement. According to the network
19 upgrade scheme established by FERC, the Utility was never meant to retain the NURs for its own
20 use, benefit, or profit. Indeed, the Utility's very right to acquire the NURs was conditioned on the
21 corresponding requirement that the Utility would flow the NURs through to the Interconnection
22 Customers.

23 44. When the Utility reimburses the Interconnection Customers for the network upgrade
24 payments they originally made, it is not paying them for goods and services rendered. Like the

25 ⁴⁷ See *PJM Interconnection*, 111 FERC ¶ 61,163 at P.18 (“[A] Transmission Provider seeking
26 a case-specific deviation from its *pro forma* interconnection agreement bears a high burden
27 to justify and explain that its changes are necessary (not merely ‘consistent with or superior
28 to’) changes.”).

⁴⁸ See Tariff at Appendices S, U, W, Y and Z.

1 natural gas pipeline owner in *Columbia Gas*, the Utility acts as a mere conduit, collecting funds
2 and transmitting them to and for the benefit of another party.

3 45. In the submission of its rate filing to FERC on October 1, 2018, the Utility
4 recognized its role as a conduit in the network upgrade scheme and acknowledged that the funds it
5 collects for network upgrades must be reimbursed to the generators (an alternate term for
6 interconnection customers):

7 Under the terms of the agreements and their associated tariffs, PG&E
8 collects up-front payments from generators to fund design,
9 engineering and construction of the Network Upgrades needed for
10 the project's interconnection. FERC's current policy requires that
such Network Upgrade payments made by the customer are subject
to refund (Network Upgrade Transmission Credits) to the generator
with interest.⁴⁹

11 46. The important difference here is between commercial loans, originating from a
12 contractually negotiated *quid pro quo*, and a trust relationship in which the debtor is obligated to
13 collect and distribute certain funds without the ability to choose the counterparties or modify the
14 terms of the transaction. The Interconnection Customers have not freely chosen to loan money to
15 the Utility and have only made the original payments pursuant to requirements established in the
16 FERC Order and the Tariff. Similarly, the Utility is required by law to accept the payments solely
17 to perform network upgrades and to reimburse the Interconnection Customers from revenues
18 collected by CAISO and entered in the Utility's accounting books and records as "network upgrade
19 credits" to be paid to the Interconnection Customers.⁵⁰

20 47. Likewise, in its obligation to remit the Test Period Payment, the Utility operates as
21 a conduit with no equitable interest in the amounts it's holding in trust for Cal Flats 150. Although
22 this requirement arises under the PG&E PPA, the Utility's role is the same as that of the debtor who
23 receives payments from an insurance company, intended to be directed towards the debtor's

24 ⁴⁹ Testimony of Pedram Arani, Program Manager in the Utility's Electric Grid Interconnection
25 Department. *Pacific Gas and Electric Company*, Transmission Owner Tariff Rate Filing,
Exhibit No. PGE-0013, FERC Docket No. ER19-13 (filed Oct. 1, 2018).

26 ⁵⁰ See *Mersing Declaration*, at ¶¶ 11-12 (The Utility is required by FERC to maintain its books
27 and records in accordance with FERC's Uniform System of Accounts (18 C.F.R. Part 101),
in which NURs are entered as "network upgrade credits" under Account 252 ("Customer
28 advances for construction")).

(continued . . .)

1 medical bills, as cited by Congress as a situation in which a debtor holds funds in a constructive
2 trust and therefore such funds do not fall within the scope of the debtor's estate under Section
3 541(d) of the Bankruptcy Code.⁵¹

4 48. Therefore, the Pass-Through Amounts cannot be considered property of the Utility's
5 bankruptcy estate, as the Utility was and is acting only as a conduit for the Pass-Through Amounts
6 held in trust. The Utility's creditors should not be permitted to share in funds in which the Utility
7 has no equitable interest and no right to retain for its own use or benefit.⁵²

8 **II. IF THE PASS-THROUGH AMOUNTS ARE NOT SUBJECT TO IMMEDIATE**
9 **TURNOVER, THEY MUST BE SEGREGATED AND THE MOVANTS ARE**
10 **ENTITLED TO ADEQUATE PROTECTION**

11 49. To the extent the Utility is not required to immediately turn over the Pass-Through
12 Amounts, the Interconnection Customers' interests in such trust property are entitled to adequate
13 protection under Sections 361 and 363 of the Bankruptcy Code.

14 50. Section 363(e) provides that an entity which possesses an "interest in property" used
15 by the debtor may request that the court prohibit or condition the debtor's use of that property as is
16 necessary to provide adequate protection of such interest. 11 U.S.C. § 363(e).

17 51. Courts have held that a constructive trust establishes an entity's interest in property
18 for adequate protection purposes under Section 363. *See In re Datair Sys. Corp.*, 42 B.R. 241, 244
19 (Bankr. N.D. Ill. 1984) (holding that a creditor would possess a secured claim for adequate
20 protection if its position arises as a result of a constructive trust); *see also Byrd v. Hoffman*, 417

21 ⁵¹ *See supra*, at ¶ 41.

22 ⁵² The issue of tracing is easily resolved for two reasons. First, the Utility had as of the Petition
23 Date and appears to have had at all times funds in its primary bank account (into which the
24 Pass-Through Amounts are initially deposited) far in excess of the Pass-Through Amounts.
25 *See Declaration of Jason P. Wells in Support of First Day Motions and Related Relief*, Case
26 No. 19-30088(DM) (Bankr. N.D. Cal. Jan. 29, 2019) [Dkt. No. 28], at ¶¶ 23 and 28. Thus,
27 applying the lowest intermediate balance test, the entirety of the Pass-Through Amounts are
28 traceable. *See Columbia Gas*, 997 F.2d at 1066 (explaining how funds may be traced using
lowest intermediate balance test). Second, even if the Pass-Through Amounts could not be
traced using the lowest intermediate balance test, the application of the lowest intermediate
balance test to limit recovery by the Movants would contravene the congressional intent
behind the FPA, for the same reasons as explained by the Columbia Gas court. *See id.*
(holding that "these refunds—all of them—belong to the customers, and if [the debtor] has
the ability to pay, trust laws notwithstanding, it should be allowed to pay in full.").

1 B.R. 320, 330 (D. Md. 2008) (holding that appellants would need to establish a valid constructive
2 trust claim in order to be considered an entity with an interest in the property under Section 363).

3 52. Section 361(2) provides that when Section 363 requires adequate protection of an
4 entity's interest in property, such adequate protection may be given in the form of a lien to the
5 extent that the debtor's use of the property results in a decrease in the value of such entity's interest
6 in the property. 11 U.S.C. § 361(2).

7 53. As outlined above, the Interconnection Customers have a constructive trust interest
8 in the Pass-Through Amounts being withheld by the Utility. Therefore, under Sections 361(2) and
9 363(e) of the Bankruptcy Code, the Interconnection Customers should be granted adequate
10 protection in the form of liens on the Pass-Through Amounts that are being held by the Utility
11 during the pendency of its bankruptcy case.

12 54. Additionally, Section 363(c)(4) of the Bankruptcy Code requires the debtor to
13 segregate and account for any cash collateral in the debtor's possession, custody, or control. 11
14 U.S.C. § 363(c)(4). Section 363(a) includes in the definition of "cash collateral" cash or other cash
15 equivalents, whenever acquired, in which the estate and an entity other than the estate have an
16 interest. As outlined above, while the Utility currently holds bare legal title to the Pass-Through
17 Amounts, it is the Interconnection Customers who hold the actual equitable interest. As both the
18 Utility and the Interconnection Customers have an interest in the Pass-Through Amounts, the Pass-
19 Through Amounts fall under the definition of cash collateral.

20 55. Accordingly, the Movants respectfully ask that the Court order the Utility to
21 segregate the Pass-Through Amounts from its general accounts, as required under Section 363(c)
22 and grant adequate protection in the form of liens under Section 361(2), so that the Interconnection
23 Customers may receive the full amount of the payments they previously advanced to the Utility in
24 compliance with the federally mandated framework for funding network upgrades. Adequate
25 protection liens and segregation of the Pass-Through Amounts are critically necessary to clarify
26 any misapprehensions that the Pass-Through Amounts might be available to satisfy the Utility's
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1 general creditors or that the Interconnection Customer's liens are subject to the liens of any of the
2 Utility's secured creditors, including the DIP Lenders.⁵³

3 **III. THE MOVANTS ARE ENTITLED TO RELIEF FROM THE STAY BECAUSE THE**
4 **UTILITY LACKS ANY EQUITY IN THE PASS-THROUGH AMOUNTS**

5 56. In the further alternative, even if the Court declines to impose a constructive trust as
6 to the withheld Pass-Through Amounts, the Movants are entitled to relief from the automatic stay
7 to pursue their rights and interests in such property pursuant to Section 362(d)(2) of the Bankruptcy
8 Code. Section 362(d)(2) provides that stay relief "*shall*" be granted "with respect to a stay of an act
9 against property" if "the debtor does not have an equity in such property" and "such property is not
10 necessary to an effective reorganization." 11 U.S.C. § 362(d)(2) (emphasis added).

11 57. As explained above, the Utility has only a legal, rather than equitable, interest in the
12 Pass-Through Amounts. Consequently, the first prong of Section 362(d)(2) is met. *See* 11 U.S.C. §
13 362(d)(2)(A); *Gracia-Gracia v. Financial Oversight and Mgmt. Board (In re Fin. Oversight &*
14 *Mgmt. Board for Puerto Rico)*, --- F.3d ---, No. 18-1463, 2019 WL 4667518, at *4-5 (1st Cir. Sept.
15 25, 2019) (explaining that debtor's lack of equitable interest in property satisfies 11 U.S.C. §
16 362(d)(2)(A) and may also support termination of stay for "cause" under § 362(d)(1) (citing *In re*
17 *Zubenko*, 528 B.R. 784, 790 (Bankr. E.D. Cal. 2015) (finding "cause exist[ed]" under § 362(d)(1) to
18 . . . terminate the automatic stay" when the estate lacked equitable interest in property)).

19 58. The Pass-Through Amounts are also "not necessary to an effective reorganization"
20 of the Utility. 11 U.S.C. § 362(d)(2)(B). The Utility bears the burden of proving that the Pass-
21 Through Amounts are necessary to an effective reorganization. 11 U.S.C. § 362(g). The Utility's
22 own proposed plan of reorganization provides for payment of all general unsecured claims.⁵⁴ The
23 Pass-Through Amounts therefore are not necessary to the Utility's post-bankruptcy reorganization.

24 ⁵³ "**DIP Lenders**" as defined in the *Final Order Pursuant to 11 U.S.C. §§ 105, 362, 363, 364,*
25 *503 and 507 and Federal Rule of Bankruptcy Procedure 2002, 4001, 6004, and 9014 (I)*
26 *Authorizing Debtors to Obtain Senior Secured, Superpriority, Postpetition Financing, (II)*
27 *Granting Liens and Superpriority Claims, (III) Modifying the Automatic Stay, and (IV)*
28 *Granting Related Relief*, Case No. 19-30088(DM) (Bankr. N.D. Cal. Mar. 27, 2019) [Dkt.
No. 1091].

⁵⁴ *See Debtors' First Amended Joint Chapter 11 Plan of Reorganization*, Case No. 19-30088,
(Bankr. N.D. Cal. Sept. 23, 2019) [Dkt. No. 3966], at P. 35-39.

1 Nor is there any basis to find that the Utility's retention of the Pass-Through Amounts is necessary
2 to the Utility's operations or ability to administer its estate pending its consummation of an effective
3 reorganization. Accordingly, even if the Court declines to impose a constructive trust and thus
4 determines that the Utility's bare legal interest in the Pass-Through Amounts constitutes property
5 of the estate, it nevertheless must grant the Movants relief from the automatic stay to seek recovery
6 of the Pass-Through Amounts. 11 U.S.C. § 362(d)(2).

7 **IV. TIMELY REMITTANCE OF THE NURS TO THE MOVANTS IS IN THE BEST**
8 **INTEREST OF THE BANKRUPTCY ESTATE AND ITS CREDITORS**

9 **A. The Utility's Failure to Timely Remit the NURs to the Movants Deprives the**
10 **Estate of Its Right to Receive Any Return on Equity for the Amount of**
11 **Reimbursed Network Upgrade Costs**

12 59. Once the Utility has reimbursed the withheld and forthcoming NURs to the
13 Interconnection Customers, the Utility will be able to record those amounts in its transmission rate
14 base and receive a return on equity for the network upgrade costs. Under the framework established
15 in the FERC Order, the Utility is permitted to include the monetary amounts of the network upgrade
16 funding that it collects from the Interconnection Customers in its transmission rates, but *only after*
17 the Utility has provided the network upgrade reimbursements to the interconnection customer.
18 Therefore, the Utility must first refund the NURs to the Interconnection Customers before it can
19 earn a return on equity for these amounts. Meanwhile, the estate and its creditors are not only being
20 deprived of the value of that return, but paying for the privilege as interest on the withheld NURs
21 continues to accrue.

22 **B. Failure to Make Timely Payment Exposes the Utility and Its Estate to**
23 **Additional Potential Regulatory Burdens and Costs**

24 60. Finally, the possible regulatory consequences to the Utility's estate of breaching its
25 obligations to timely remit the Pass-Through Amounts counsels in favor of timely performance.
26 For that reason, the Utility moved in its first bankruptcy case for authority to pay certain "Generator
27 Advances" for network upgrades, justifying such payments based on the effect that nonpayment
28 would have on its relationship with FERC (which had ordered the payments):

Sound business justifications support PG&E's compliance with
FERC rulings as described in the Motion. PG&E is obligated to
submit to FERC jurisdiction and obey FERC orders. FERC has

1 mandated that transmission owners across the country provide such
2 credits. Because PG&E is subject to FERC regulations, it must abide
3 by subsequent mandates ordered by FERC.

4 *See Notice of Motion and Motion of [the Utility] for Order Authorizing Debtor to Repay Certain*
5 *Generator Advances* at 7-8, Case No. 01-30923 (Bankr. N.D. Cal. Mar. 20, 2003) [Dkt. No. 12396].

6 NOTICE

7 Notice of the Motion will be provided to (i) the Debtors and counsel to the Debtors;
8 (ii) counsel to the Office of the United States Trustee for Region 17; (iii) counsel to the
9 administrative agent under the Debtors' debtor-in-possession financing facility; (iv) counsel to the
10 collateral agent under the Debtors' debtor-in-possession financing facility; (v) counsel to the
11 CPUC; (vi) the U.S. Nuclear Regulatory Commission; (vii) the U.S. Department of Justice, as
12 counsel for the United States on behalf of the Federal Energy Regulatory Commission; (viii) the
13 Official Committee of Unsecured Creditors; (ix) the Official Committee of Tort Claimants; (x) the
14 Securities and Exchange Commission; (xi) the Internal Revenue Service; (xii) the Office of the
15 California Attorney General; (xiii) the Office of the United States Attorney for the Northern District
16 of California; and (xiv) those parties who have requested notice pursuant to Fed. R. Bankr. P. 2002.
17 The Movants respectfully submit that no further notice is required.

18 CONCLUSION

19 For the foregoing reasons, the Movants request that the Court issue an order in the form
20 attached as **Exhibit A**, requiring the Utility (i) to make immediate payment of the Pass-Through
21 Amounts to the respective Movants, including interest accrued thereon at the regulated rate, and
22 (ii) to immediately resume making timely payments of all NURs becoming due thereafter, in
23 addition to such other and further relief as the Court may deem just and appropriate.
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1 DATED: October 22, 2019

2 STOEL RIVES LLP

3 /s/ David B. Levant

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14 *Interconnection Customers*

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EXHIBIT A
Proposed Order

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13 **In re:**

14 **PG&E CORPORATION**

15 **- and -**

16 **PACIFIC GAS AND ELECTRIC**
17 **COMPANY,**

18 **Debtors.**

- 19 ☐ Affects PG&E Corporation
20 ☒ Affects Pacific Gas and Electric
21 Company
22 ☐ Affects both Debtors

23 **All papers shall be filed in the Lead Case, No.*
24 *19-30088 (DM)*

Bankruptcy Case No. 19-30088 (DM)
Chapter 11
(Lead Case)
(Jointly Administered)

**ORDER GRANTING MOTION BY AD
HOC GROUP OF INTERCONNECTION
CUSTOMERS TO COMPEL PAYMENT
OF PASS-THROUGH AMOUNTS
WITHHELD BY PACIFIC GAS
AND ELECTRIC COMPANY**

Date: November 13, 2019
Time: 10:00 a.m. (PT)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

Objection Deadline:
November 8, 2019, at 4:00 p.m. (PT)

25 This matter came before the Court on the “Motion and Memorandum of the Ad Hoc Group
26 of Interconnection Customers to Compel Payment of Pass-Through Amounts Withheld by Pacific
27 Gas and Electric Company” (Dkt. No. ____; the “*Pass-Through Motion*”).⁵⁵ The Court has

28 ⁵⁵ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed
to such terms in the Pass-Through Motion.

jurisdiction to consider the Pass-Through Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, the Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges, General Order 24 (N.D. Cal.) and Bankruptcy Local Rule 5011-1(a); venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; the Pass-Through Motion and the requested relief constitute a core proceeding pursuant to 28 U.S.C. § 157(b); the Court having found and determined that notice of the Pass-Through Motion as provided to the parties listed therein is reasonable and sufficient under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Pass-Through Motion, related declarations and submissions (including, without limitation, the Mersing Declaration, the Narayanan Declaration, the Liddell Declaration, and the Yoder Declaration); the Court having determined that the bankruptcy estate of Pacific Gas and Electric Company (the “*Utility*”) has no equitable interest in the Pass-Through Amounts (as defined below) within the meaning of 11 U.S.C. § 541(d); and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Pass-Through Motion is granted to the extent set forth in this Order.
2. The Utility is hereby ordered, as soon as practicable and in all events no later than December 31, 2019, to remit to the following-listed interconnection customers of the Utility (the “*Interconnection Customers*”) the amounts indicated after their names that the Utility was contractually obligated to remit to them on or prior to the date of this Order pursuant to the terms of the interconnection agreement referenced below (the “*Interconnection Agreements*”):

Movant/Interconnection Customer	Interconnection Agreement	Amount
Solar Star California XIII, LLC	LGIA Q577	\$6,000,000.00
67RK 8me LLC, 65HK 8me LLC, 87RL 8me LLC	LGIA Q744	\$462,171.42
Adera Solar, LLC	SGIA Q644	\$219,150.00

Movant/Interconnection Customer	Interconnection Agreement	Amount
RE Mustang LLC, RE Mustang 3 LLC, RE Mustang 4 LLC	LGIA Q643W	\$3,514,185.93

3. The Utility is further ordered to remit to the Interconnection Customers, together with the remittances ordered in the preceding paragraph, accrued interest on such amounts at the rate specified by the Federal Energy Regulatory Commission (and as referenced in the applicable interconnection agreement) as of the date such amounts are remitted to the Interconnection Customer by the Utility.

4. The Utility is ordered to determine, as soon as reasonably practicable, the dates and amounts on which the NURs under the CA Flats Interconnection Agreement, as defined in the Narayanan Declaration, are payable to Cal Flats 130 and to Cal Flats 150 under the CA Flats Interconnection Agreement in the same manner as the Utility would if it were not a debtor under Chapter 11, and relief from the stay is granted to Cal Flats 130 and Cal Flats 150 to participate in all negotiations and proceedings contemplated by the CA Flats Interconnection Agreement for such purpose. Upon determination of such NUR amounts and the schedule for payment of the NURs, the Utility is authorized and directed to remit to Cal Flats 130 and to Cal Flats 150 all such NUR amounts (if any) that are determined to be past due and all that subsequently become due and payable, as and when payable, so long as the Utility remains a debtor under the Bankruptcy Code.

5. The Utility is further ordered, as soon as practicable and in all events no later than December 31, 2019, to remit to Cal Flats 150 payment in the amount of \$274,159.67 for test energy generated from December 20, 2018 through January 28, 2019.

6. From and after the date of this Order, the Utility is further ordered to timely remit to the Interconnection Customers all Pass-Through Amounts consistent with the Utility's contractual obligations under the Interconnection Agreements.

1 7. For purposes of this Order, “*Pass-Through Amounts*” means (i) “Network Upgrade
2 Reimbursements”, as defined in each of the Interconnection Agreements, and (ii) the “Test Period
3 Payments”, as defined in Section 4.1(c) of the CA Flats Solar 150, LLC Power Purchase Agreement
4 with the Utility.

5 8. This Court shall retain jurisdiction to hear and determine all matters arising from or
6 related to the implementation, interpretation, or enforcement of this Order.

7 ****END OF ORDER****
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